

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

George M. Adams,)	C/A No. 0:13-3023-DCN-PJG
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Cyndi Halupa, Deputy Clerk, US Court of)	
Appeal Fourth Circuit,)	
)	
Defendant.)	
_____)	

The plaintiff, George M. Adams (“Plaintiff”), a self-represented state prisoner, brings this action pursuant to 42 U.S.C. § 1983. This civil rights matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC. Plaintiff seeks for Defendant Cyndi Halupa, Deputy Clerk for the United States Court of Appeals for the Fourth Circuit, not to be granted immunity and to be held liable to Plaintiff. Having reviewed the Complaint in accordance with applicable law, the court concludes that it should be summarily dismissed.

I. Factual and Procedural Background

Plaintiff’s claim stems from the processing of his request for a certificate of appealability in Adams v. Padula, C/A No. 3:11-31-DCN (D.S.C.). According to the Complaint,¹ on September 28, 2012, Plaintiff requested a certificate of appealability from the United States Court of Appeals for the Fourth Circuit. (ECF No. 1 at 3.) On March 8, 2013, the Fourth Circuit denied Plaintiff’s request. On March 21, 2013, Plaintiff filed a petition for rehearing/rehearing *en banc* and, four days later, the Fourth Circuit issued a stay of its mandate. On April 9, 2013, Plaintiff filed with

¹ Plaintiff’s account of the procedural history differs markedly from that reflected on this court’s docket. See Adams v. Padula, C/A No. 3:11-31-DCN (D.S.C.).

the Fourth Circuit a motion pursuant to Rule 60(b)(4). By notice dated May 2, 2013, Defendant Halupa notified Plaintiff pursuant to the Fourth Circuit's Local Rule 40(d) that the Fourth Circuit would "not receive motions or other papers requesting further relief in the case because the court had denied the petition for rehearing." (ECF No. 1 at 3.) On May 8, 2013, the Fourth Circuit issued its mandate.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and the Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996). This review has been conducted in light of the following precedents: Denton v. Hernandez, 504 U.S. 25 (1992); Neitzke v. Williams, 490 U.S. 319, 324-25 (1989); Haines v. Kerner, 404 U.S. 519 (1972); Nasim v. Warden, Md. House of Corr., 64 F.3d 951 (4th Cir. 1995) (*en banc*); Todd v. Baskerville, 712 F.2d 70 (4th Cir. 1983).

The Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss the case upon a finding that the action "fails to state a claim on which relief may be granted," "is frivolous or malicious," or "seeks monetary relief against a defendant who is immune from such relief."² 28 U.S.C. § 1915(e)(2)(B). A finding of frivolousness can be made where the complaint "lacks an arguable basis either in law or in fact." Denton, 504 U.S. at

² Screening pursuant to § 1915A is subject to this standard as well.

31. Hence, under § 1915(e)(2)(B), a claim based on a meritless legal theory may be dismissed sua sponte. See Neitzke, 490 U.S. at 327; Allison v. Kyle, 66 F.3d 71 (5th Cir. 1995).

This court is required to liberally construe *pro se* complaints. Erickson v. Pardus, 551 U.S. 89, 94 (2007). Such *pro se* complaints are held to a less stringent standard than those drafted by attorneys, id.; Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case, Hughes v. Rowe, 449 U.S. 5, 9 (1980); Cruz v. Beto, 405 U.S. 319 (1972). When a federal court is evaluating a *pro se* complaint, the plaintiff's allegations are assumed to be true. Erickson, 551 U.S. at 93 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007)).

Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions"). The mandated liberal construction afforded to *pro se* pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so; however, a district court may not rewrite a complaint to include claims that were never presented, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999), construct the plaintiff's legal arguments for him, Small v. Endicott, 998 F.2d 411 (7th Cir. 1993), or "conjure up questions never squarely presented" to the court, Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985).

B. Analysis: Quasi-Judicial Immunity

The doctrine of absolute quasi-judicial immunity has been adopted and made applicable to court support personnel such as Defendant Halupa because of “the ‘danger that disappointed litigants, blocked by the doctrine of absolute immunity from suing the judge directly, will vent their wrath on clerks, court reporters, and other judicial adjuncts.’” Kincaid v. Vail, 969 F.2d 594, 601 (7th Cir. 1992) (citation omitted); see also Pink v. Lester, 52 F.3d 73 (4th Cir. 1995) (overruling McCray v. Maryland, 456 F.2d 1 (4th Cir. 1972), which held that clerks of court might be held liable for negligent conduct in the filing of prisoner pleadings). Thus, Defendant Halupa is immune from Plaintiff’s claims, both for damages or injunctive relief. See Montero v. Travis, 171 F.3d 757, 761 (2d Cir. 1999) (barring injunctive relief against a quasi-judicial official); Gilmore v. Bostic, 636 F. Supp. 2d 496, 506 (S.D. W. Va. 2009) (collecting cases). As the allegations against Defendant Halupa specifically involve her official responsibilities, this case should be summarily dismissed.

RECOMMENDATION

Accordingly, the court recommends that the Complaint be summarily dismissed without prejudice and without issuance and service of process.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

March 6, 2014
Columbia, South Carolina

Plaintiff’s attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).